

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

VINCENT L. WEBB; et al.

Civil No. 02-645-CO

Plaintiffs,

FINDINGS AND RECOMMENDATION

v.

CHRIS FAIN; et al.

Defendants.

COONEY, Magistrate Judge:

Dr. Hong, as assignee of the claims of plaintiff CD Micro, Inc., has filed a motion to voluntarily dismiss all claims of CD Micro, Inc., against defendant Devine (#96). Dr. Hong represents that the motion is made pursuant to an agreement between Dr. Hong and defendant Devine.

**I. DISCUSSION**

Federal Rules of Civil Procedure provides in pertinent part that, subject to certain limitations, an action may be dismissed without order of the court by filing a stipulation of dismissal signed by all parties who have appeared in the action. Fed. R. Civ. P. 41(a)(1)(ii). Further, after a defendant has filed an answer or motion for summary judgment, an action may be dismissed voluntarily at plaintiff's request only by order of the court and "upon such terms and conditions as the court deems

proper." Fed. R. Civ. P. 41(a)(2). In the Ninth Circuit, "Although costs and attorney fees are often imposed upon a plaintiff who is granted a voluntary dismissal under Fed.R.Civ.P. 41(a)(2), no circuit court has held that payment of the defendant's costs and attorney fees is a prerequisite to an order granting voluntary dismissal." Stevedoring Servs. of Am. v. Armilla Int'l B.V., 889 F.2d 919, 921 (9<sup>th</sup> Cir. 1989) (and cases cited). Here, Dr. Hong requests that dismissal be with prejudice and without fees or costs, and states that an agreement has been entered into between him and defendant Devine.

The court finds that, in the circumstances, this action should be dismissed as to any claims of plaintiff CD Micro, Inc., against defendant Devine, with prejudice and without costs and fees imposed.

## **II. RECOMMENDATION**

For the foregoing reasons, the motion to dismiss defendant Devine only, brought by Dr. Hong, as assignee of the claims of plaintiff CD Micro, Inc. (#96), should be granted, with prejudice, and without fees and costs.

***This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to***

**appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.**

DATED this \_\_19\_\_ day of December, 2005.

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/s/  
UNITED STATES MAGISTRATE JUDGE